IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 842 OF 1999

Meera Pharmaceuticals Ltd. & Anr. ...Applicants
V/s.
M/s.Khushalchand Industries & Anr. ...Respondents

Mr.Prakash Naik for Applicants.
Ms.M.M. Deshmukh, APP for State.

CORAM : V.M. KANADE, J.

DATED : JANUARY 18, 2006

P.C. :-

. Heard learned Counsel for the applicants and learned Counsel for the respondents.

. The applicants are challenging the order of issuance of process by the Metropolitan Magistrate, 44th Court, Andheri, Bombay, on a complaint filed by the respondents under Section 138 read with Section 141 of the Negotiable Instruments Act.

2. It is submitted by the learned Counsel appearing on behalf of the applicants that after the complaint was filed, the Demand Draft towards the amount of the dishonour of cheque of Rs.25,000/- was handed over to the respondents with a covering letter and the said

Demand Draft was accepted by the respondents. This fact, however, is disputed by the learned Counsel appearing on behalf of the respondents. In their reply to the discharge application which was filed by the applicants herein, the respondents have stated "the said Demand Draft of Rs.25,000/- if at all was handed over to the complainant without prejudice to the case in part discharge of the civil liability of the accused and this did not absolve the applicant from the criminal liability".

3. The submission of the learned Counsel for the applicants cannot be accepted for the simple reason that the fact about the payment of Rs.25,000/- is disputed and this fact has not been established by the applicants during the trial. The Criminal Application, therefore, is dismissed and the trial Court is directed to decide the case on its own merits. All submissions made by the learned Counsel for the applicants, respondents are kept open.

. Application is disposed of accordingly.

(V.M. KANADE, J.)